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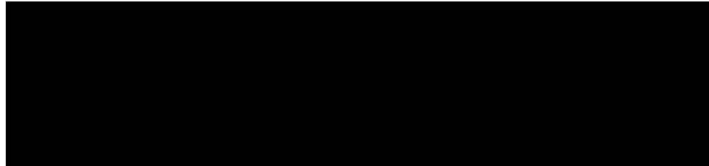
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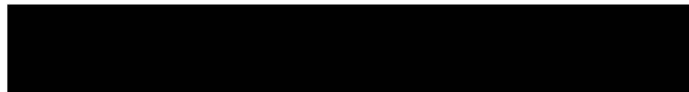
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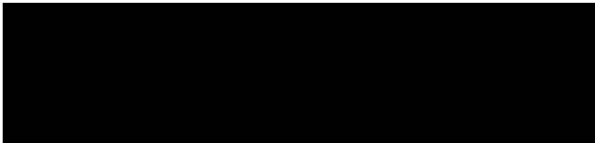
FILE: WAC 08 096 50350 OFFICE: CALIFORNIA SERVICE CENTER Date: **APR 28 2009**

IN RE: Petitioner:
Beneficiary:



PETITION: Petition for a Nonimmigrant Worker Pursuant to Section 101(a)(15)(L) of the Immigration and Nationality Act, 8 U.S.C. § 1101(a)(15)(L)

ON BEHALF OF PETITIONER:



INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

If you believe the law was inappropriately applied or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen. Please refer to 8 C.F.R. § 103.5 for the specific requirements. All motions must be submitted to the office that originally decided your case by filing a Form I-290B, Notice of Appeal or Motion, with a fee of \$585. Any motion must be filed within 30 days of the decision that the motion seeks to reconsider, as required by 8 C.F.R. § 103.5(a)(1)(i).


John F. Grissom
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, California Service Center, denied the nonimmigrant visa petition. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The petitioner filed this nonimmigrant petition seeking to extend the employment of its president as an L-1A nonimmigrant intracompany transferee pursuant to section 101(a)(15)(L) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1101(a)(15)(L). The petitioner, a California corporation, states that it is operating as an importer and distributor of garments and stuffed toys. It claims to be a subsidiary of [REDACTED], located in China. The beneficiary was initially granted one year in L-1A classification in order to open a new office in the United States and the petitioner now seeks to extend the beneficiary's status for two additional years.

The director denied the petition, concluding that the petitioner failed to establish that the beneficiary will be employed in the United States in a primarily managerial or executive capacity.

The petitioner subsequently filed an appeal. The director declined to treat the appeal as a motion and forwarded the appeal to the AAO. On appeal, counsel for the petitioner asserts that the director's determination that the beneficiary will not be employed in a managerial or executive capacity is "in error and contrary to established law." Counsel asserts that the petitioner now employs a total of 26 workers and requests that the petition be approved.

To establish eligibility for the L-1 nonimmigrant visa classification, the petitioner must meet the criteria outlined in section 101(a)(15)(L) of the Act. Specifically, a qualifying organization must have employed the beneficiary in a qualifying managerial or executive capacity, or in a specialized knowledge capacity, for one continuous year within the three years preceding the beneficiary's application for admission into the United States. In addition, the beneficiary must seek to enter the U.S. temporarily to continue rendering his or her services to the same employer or a subsidiary or affiliate in a managerial, executive or specialized knowledge capacity.

The regulation at 8 C.F.R. § 214.2(l)(3) states that an individual petition filed on Form I-129 shall be accompanied by:

- (i) Evidence that the petitioner and the organization which employed or will employ the alien are qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section.
- (ii) Evidence that the alien will be employed in an executive, managerial, or specialized knowledge capacity, including a detailed description of the services to be performed.
- (iii) Evidence that the alien has at least one continuous year of full-time employment abroad with a qualifying organization within the three years preceding the filing of the petition.
- (iv) Evidence that the alien's prior year of employment abroad was in a position that was managerial, executive or involved specialized knowledge and that the alien's prior education, training and employment qualifies him/her to perform the intended

services in the United States; however the work in the United States need not be the same work which the alien performed abroad.

The regulation at 8 C.F.R. § 214.2(l)(14)(ii) also provides that a visa petition, which involved the opening of a new office, may be extended by filing a new Form I-129, accompanied by the following:

- (A) Evidence that the United States and foreign entities are still qualifying organizations as defined in paragraph (l)(1)(ii)(G) of this section;
- (B) Evidence that the United States entity has been doing business as defined in paragraph (l)(1)(ii)(H) of this section for the previous year;
- (C) A statement of the duties performed by the beneficiary for the previous year and the duties the beneficiary will perform under the extended petition;
- (D) A statement describing the staffing of the new operation, including the number of employees and types of positions held accompanied by evidence of wages paid to employees when the beneficiary will be employed in a managerial or executive capacity; and
- (E) Evidence of the financial status of the United States operation.

The sole issue addressed by the director is whether the petitioner established that the beneficiary will be employed in a primarily managerial or executive capacity under the extended petition.

Section 101(a)(44)(A) of the Act, 8 U.S.C. § 1101(a)(44)(A), provides:

The term "managerial capacity" means an assignment within an organization in which the employee primarily--

- (i) manages the organization, or a department, subdivision, function, or component of the organization;
- (ii) supervises and controls the work of other supervisory, professional, or managerial employees, or manages an essential function within the organization, or a department or subdivision of the organization;
- (iii) if another employee or other employees are directly supervised, has the authority to hire and fire or recommend those as well as other personnel actions (such as promotion and leave authorization), or if no other employee is directly supervised, functions at a senior level within the organizational hierarchy or with respect to the function managed; and

- (iv) exercises discretion over the day-to-day operations of the activity or function for which the employee has authority. A first-line supervisor is not considered to be acting in a managerial capacity merely by virtue of the supervisor's supervisory duties unless the employees supervised are professional.

Section 101(a)(44)(B) of the Act, 8 U.S.C. § 1101(a)(44)(B), provides:

The term "executive capacity" means an assignment within an organization in which the employee primarily--

- (i) directs the management of the organization or a major component or function of the organization;
- (ii) establishes the goals and policies of the organization, component, or function;
- (iii) exercises wide latitude in discretionary decision-making; and
- (iv) receives only general supervision or direction from higher level executives, the board of directors, or stockholders of the organization.

The petitioner filed the Form I-129, Petition for a Nonimmigrant Worker, on February 15, 2008. In a letter dated February 13, 2008, the petitioner explained that its main business areas in the United States include obtaining and filling sample garment orders from local clothing factories, and importing ready-to-wear garments and handbags from China for wholesale to local wholesalers. The petitioner stated that it is also engaged in seeking customers for its parent company's garments and stuffed toys, collecting market information, and seeking out business partners for its parent company.

The petitioner indicated that the beneficiary performs both executive and managerial duties in his capacity as president and general manager of the U.S. company. Specifically, the petitioner stated that the beneficiary performs the following executive duties:

1. Plans and directs all aspects of organization's business development, sales and marketing policies, objectives, and initiatives;
2. Establishes internal polices [sic], including but not limited to, reward and punishment policies, performance evaluation standards, employee benefits, etc.;
3. Determines the budgetary and personnel needs to achieve objectives;
4. Be responsible for developing new market initiatives, assessing new markets, and analyzing business opportunities;
5. Represents the company's interest in dealing with government agencies, customers, employees, business services providers, etc.;

6. Consults with CPA and legal counsel to familiarize with federal, state, and local government rules and regulations governing business practice in the U.S., including but not limited to business registration, tax reporting, labor relations, etc.;
7. Liaises with parent company to coordinate the U.S. operations with that of the parent company; and
8. Reports to the parent company regarding the U.S. subsidiary's business progress, financial situation, and new market trends in the U.S., and seeks financial support from the parent company to fund the expansion program[.]

In addition, the petitioner stated that the beneficiary will perform the following duties in his capacity as general manager:

1. Implements financial programs and hiring programs to support business and employee needs;
2. Establishes responsibilities and procedures of essential functions, and directs and coordinates overall operation through subordinates;
3. Provides training to subordinates and specifies job assignments;
4. Supervises and controls the work of sales manager, finance manager, warehouse manager and technical support manager;
5. Exercises total control over financial issues such as fund management, cash flow, extension of credit;
6. Exercises personnel authorities such as hiring and firing, leave authorization, etc.;
7. Conducts performance evaluation of subordinates according to established policies; and
8. Reviews operating reports to determine business progress and take necessary actions to obtain business objectives.

The petitioner stated that the company had four payroll employees at the time of filing, including the beneficiary, a manager, and two sewing workers. The petitioner stated that the manager works 30 hours per week at an hourly rate of \$7.50 and is responsible for hiring training and supervising sewing workers, while the sewing workers work on a "piece work basis," and are responsible for sewing sample garments specified on order contracts. The petitioner stated that it uses the services of an accountant on an annual service fee basis, and indicated that the accountant is responsible for accounting and financial records, payroll and financial statements. Finally, the petitioner stated that it intends to hire a sales/marketing manager, a sales person, a warehouse director, and a warehouse worker "in the next few months."

The director issued a request for additional evidence (RFE) on February 21, 2008, instructing the petitioner to submit the following: (1) a detailed organizational chart clearly identifying the beneficiary's subordinates by name and job title; (2) descriptions of job duties, educational level, immigration status, annual salaries/wages and source of remuneration for all employees under the beneficiary's supervision; (3) a list of specific goals and policies the beneficiary has established over the last six months; (4) a list of specific discretionary decisions made by the beneficiary; (5) a specific day-to-day description of the beneficiary's duties over the previous six months; and (6) evidence that the beneficiary will supervise and control the work of other supervisory, professional or managerial employees or manage an essential function within the U.S. company.

Former counsel for the petitioner submitted a response dated March 14, 2008. In response to the director's request for a specific day-to-day description of the beneficiary's duties, counsel re-iterated the position description from the petitioner's letter of February 13, 2008. Counsel indicated that the beneficiary has been in charge of determining the company's direction, adjusting hiring, finance and budget strategies, and equipment purchases. Counsel noted that the petitioner established a workshop for production of sample garments in June 2007, but suffered a setback in November 2007, when nine sewing machines were stolen from the petitioner's workshop. Counsel stated that in the beginning of 2008, the beneficiary decided to adjust the company's strategies from garment sample processing to importing ready-to-wear garments from the parent company. Counsel further indicated that the petitioner recruited a sales/marketing manager, sales person, a warehouse director and an office clerk to perform job duties related to the import and wholesale operations. Counsel concluded by stating that the beneficiary manages the company's sales, production, shipping, receiving and storage functions through direction and supervision of subordinate managers and supervisors, and manages the accountant and finance function through contracted employees.

The petitioner's new organizational chart showed a total of eight payroll employees, including the beneficiary, a warehouse director, a sales manager, a workshop manager, an office clerk, a sales person, and two sewing workers, as well as two contracted accountants. The petitioner indicated that the warehouse director, office clerk and sales manager all have college degrees.

The petitioner stated that all four new employees were hired on February 18, 2008 and work on a full-time basis. The petitioner provided copies of Forms I-9, Employment Eligibility Verification for the four new employees, and a copy of checks issued to each employee for the pay period ended on February 29, 2008.

The director denied the petition on March 31, 2008, concluding that the petitioner failed to establish that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition. In denying the petition, the director emphasized that USCIS would consider the petitioner's staffing levels as of the date of filing, at which time the company employed only the beneficiary, the workshop manager and two sewing workers. The director determined that the petitioner failed to establish that the beneficiary would be supervising and controlling the work of managerial, supervisory or professional workers who would relieve him from primarily performing the services of the company. The director concluded that the petitioner had not grown to the point where it could support the beneficiary in a primarily managerial or executive capacity.

On appeal, counsel for the petitioner asserts that the director's findings were "in error and contrary to established law." Counsel asserts that, as of May 2008, the petitioner employs a total of 25 employees, including six college graduates, and has moved to a 6,000 square foot facility. Counsel indicates that the petitioner has started manufacturing garments in the United States in addition to importing goods from overseas and has adopted a new fictitious name. Counsel emphasizes that the beneficiary's wide latitude in determining the direction of the business and expanding the business is consistent with "executive" duties. In support of the appeal, the petitioner submits a new organizational chart depicting the beneficiary as president, a general manager, a shipping warehouse manager, a quality controller, a production manager, and 20 "workers." None of the employees identified on the original organizational chart appear on the latest chart, with the exception of the beneficiary.

Comparing the new organizational chart to the organizational chart submitted in response to the RFE, the AAO notes that all four of the employees claimed to be hired in February 2008 appear on the latest chart. These employees, [REDACTED] and [REDACTED] were previously identified as holding the positions of Warehouse Director, Sales Manager, Office Clerk, and Sales Person, respectively, and the petitioner previously stated that three of these individuals completed a college education. The petitioner now identifies these four employees as "workers" who have completed only a primary school education.

The petitioner submits copies of Forms W-4 and I-9 for all additional employees claimed to be hired in April and May 2008, as well as copies of its new lease agreement, fictitious name certificate, and evidence of recent business activities.

Upon review, and for the reasons discussed herein, the petitioner has not established that the beneficiary would be employed in a primarily managerial or executive capacity under the extended petition.

Preliminarily, the AAO emphasizes that the petitioner must establish eligibility at the time it files the nonimmigrant petition. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). A petitioner may not make material changes to a petition in an effort to make a deficient petition conform to USCIS requirements. *See Matter of Izummi*, 22 I&N Dec. 169, 176 (Assoc. Comm. 1998).

When examining the executive or managerial capacity of the beneficiary, the AAO will look first to the petitioner's description of the job duties. *See* 8 C.F.R. § 214.2(l)(3)(ii). The petitioner's description of the job duties must clearly describe the duties to be performed by the beneficiary and indicate whether such duties are either in an executive or managerial capacity. *Id.*

The definitions of executive and managerial capacity each have two parts. First, the petitioner must show that the beneficiary performs the high-level responsibilities that are specified in the definitions. Second, the petitioner must show that the beneficiary primarily performs these specified responsibilities and does not spend a majority of his or her time on day-to-day functions. *Champion World, Inc. v. INS*, 940 F.2d 1533 (Table), 1991 WL 144470 (9th Cir. July 30, 1991). While the AAO does not doubt that the beneficiary exercises discretion over the petitioner's business as president and apparently its only full-time employee at the time the petition was filed, the totality of the evidence submitted does not demonstrate that the beneficiary's actual duties would be primarily managerial or executive in nature.

The position description the petitioner provided, while lengthy, was overly general and failed to identify the specific duties the beneficiary would perform on a day-to-day basis that would qualify as managerial or executive in nature. Much of the position description simply paraphrases the statutory definitions of managerial and executive capacity. *See* sections 101(a)(44)(A) and (B) of the Act. For example, the petitioner stated that the beneficiary "plans and directs all aspects of organization's business development, sales and marketing policies, objectives and initiatives," "establishes internal policies [sic]," "exercises personnel authorities such as hiring and firing"; "directs and coordinates overall operation through subordinates"; and "supervises and controls" the work of managerial employees. While such duties are vaguely indicative of the

beneficiary's level of authority, specifics are clearly an important indication of whether a beneficiary's duties are primarily executive or managerial in nature, otherwise meeting the definitions would simply be a matter of reiterating the regulations. *Fedin Bros. Co., Ltd. v. Sava*, 724 F. Supp. 1103 (E.D.N.Y. 1989), *aff'd*, 905 F.2d 41 (2d. Cir.1990). Therefore, reciting the beneficiary's vague job responsibilities or broadly-cast business objectives is not sufficient; the regulations require a detailed description of the beneficiary's daily job duties. The petitioner failed to provide any detail or explanation of the beneficiary's activities in the course of his daily routine. The actual duties themselves will reveal the true nature of the employment. *Id.* at 1108.

Furthermore, some of the duties in the beneficiary's position description are not clearly managerial in nature, such as "developing new market initiatives assessing new markets and analyzing business opportunities," and representing the company's interest in dealing with customers. While the petitioner indicates that the beneficiary "plans and directs" all aspects of sales and marketing, the petitioner had no sales and marketing staff at the time of filing. As such it appears that the beneficiary himself was directly performing the sales and marketing function himself, including all non-managerial duties associated with these functions. Moreover, the petitioner's claim that the beneficiary's duties at the time of filing included supervising a sales manager, a finance manager, a warehouse manager and a technical support manager is not supported by the evidence of record. Two of these positions were not even proposed on the petitioner's organizational chart, and none of these positions were filled at the time of filing. It is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. 582, 591-92 (BIA 1988).

Overall, the petitioner's initial description of the beneficiary's duties was excessively vague, and not credible given the staffing of the company at the time the petition was filed, which consisted of a part-time workshop manager and two sewing workers, none of whom were engaged in any sales, marketing, order processing, import, or administrative functions. Accordingly, the director reasonably requested a specific day-to-day description of the duties the beneficiary has performed. In response, the petitioner re-submitted the same position description which was already deemed by the director to be insufficient to establish the beneficiary's employment in a primarily managerial or executive capacity. Failure to submit requested evidence that precludes a material line of inquiry shall be grounds for denying the petition. 8 C.F.R. § 103.2(b)(14).

As stated in the statute, the beneficiary must be primarily performing duties that are managerial or executive. See sections 101(a)(44)(A) and (B) of the Act. Furthermore, the petitioner bears the burden of documenting what portion of the beneficiary's duties will be managerial or executive and what proportion will be non-managerial or non-executive. *Republic of Transkei v. INS*, 923 F.2d 175, 177 (D.C. Cir. 1991). Given the lack of a detailed description of the beneficiary's duties and the amount of time he will devote to qualifying duties on a day-to-day basis, the record does not demonstrate that the beneficiary will be employed in a primarily managerial or executive capacity.

Such a conclusion is supported by a review of the totality of the evidence in this matter. A company's size alone, without taking into account the reasonable needs of the organization, may not be the determining factor in denying a visa to a multinational manager or executive. See § 101(a)(44)(C) of the Act, 8 U.S.C. § 1101(a)(44)(C). In the present matter, however, the regulations provide strict evidentiary requirements for the extension of a "new office" petition and require USCIS to examine the organizational structure and

staffing levels of the petitioner. See 8 C.F.R. § 214.2(l)(14)(ii)(D). The regulation at 8 C.F.R. § 214.2(l)(3)(v)(C) allows the "new office" operation one year within the date of approval of the petition to support an executive or managerial position. If the business does not have sufficient staffing after one year to relieve the beneficiary from primarily performing operational and administrative tasks, the petitioner is ineligible by regulation for an extension.

Furthermore, in reviewing the relevance of the number of employees a petitioner has, federal courts have generally agreed that USCIS "may properly consider an organization's small size as one factor in assessing whether its operations are substantial enough to support a manager." *Family Inc. v. U.S. Citizenship and Immigration Services* 469 F. 3d 1313, 1316 (9th Cir. 2006) (citing with approval *Republic of Transkei v. INS*, 923 F.2d. 175, 178 (D.C. Cir. 1991); *Fedin Bros. Co. v. Sava*, 905 F.2d 41, 42 (2d Cir. 1990)(per curiam); *Q Data Consulting, Inc. v. INS*, 293 F. Supp. 2d 25, 29 (D.D.C. 2003)). Furthermore, it is appropriate for USCIS to consider the size of the petitioning company in conjunction with other relevant factors, such as a company's small personnel size, the absence of employees who would perform the non-managerial or non-executive operations of the company, or a "shell company" that does not conduct business in a regular and continuous manner. See, e.g. *Systronics Corp. v. INS*, 153 F. Supp. 2d 7, 15 (D.D.C. 2001).

At the time of filing, the petitioner was a one-year-old company engaged in taking orders for garment samples from U.S. companies, producing garment samples from customer designs, coordinating manufacture of garments from approved designs, importing garments, collecting market data, and promoting its parent company's products to potential U.S. business partners and customers. If the petitioner was in fact engaged in the business activities described, the petitioner has a reasonable need for staff to contact potential buyers, take orders, produce garment samples using a sewing machine, coordinate customer orders with the parent company, coordinate import and delivery of garments, collect market data, market the petitioner's services and parent company's goods, and perform the day-to-day administrative and bookkeeping duties associated with operating a business. At the time of filing, the petitioner employed a full-time president, a workshop supervisor who worked 30 hours per week, and two sewing machine operators who worked on a "piece work" basis. The petitioner also claimed to employ an accountant on a contract basis, but the nature and scope of her services have not been defined and are not mentioned in the independent contractor agreement signed. The petitioner did not have any employees to perform any of the daily functions of the company beyond sewing sample garments based on customer designs.

Therefore, it is reasonable to conclude that the beneficiary himself performed all other functions within the company, rather than overseeing subordinate employees in the performance of such activities as taking customer orders, coordinating orders with the parent company, collecting marketing information, and promoting the parent company's products in the United States, as well as performing the company's day-to-day administrative functions. It is also evident that such duties would reasonably require the majority of the beneficiary's time. An employee who "primarily" performs the tasks necessary to produce a product or to provide services is not considered to be "primarily" employed in a managerial or executive capacity. See sections 101(a)(44)(A) and (B) of the Act (requiring that one "primarily" perform the enumerated managerial or executive duties); see also *Matter of Church Scientology Int'l*, 19 I&N Dec. 593, 604 (Comm. 1988).

The reasonable needs of the petitioner will not supersede the requirement that the beneficiary be "primarily" employed in a managerial or executive capacity as required by the statute. See sections 101(a)(44)(A) and (B)

of the Act, 8 U.S.C. § 1101(a)(44). The reasonable needs of the petitioner may justify a beneficiary who allocates 51 percent of his duties to managerial or executive tasks as opposed to 90 percent, but those needs will not excuse a beneficiary who spends the majority of his or her time on non-qualifying duties. A review of the totality of the record fails to establish that the petitioner has a reasonable need for the beneficiary to perform primarily managerial or executive duties at its current stage of development.

Even though the enterprise is in a preliminary stage of organizational development and anticipates additional growth, the petitioner is not relieved from meeting the statutory requirements. A visa petition may not be approved based on speculation of future eligibility or after the petitioner or beneficiary becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978); *Matter of Katigbak*, 14 I&N Dec. 45, 49 (Comm. 1971). In the instant matter, the petitioner has not reached the point that it can employ the beneficiary in a predominantly managerial or executive position. For this reason, the appeal will be dismissed.

The AAO acknowledges former counsel's claim that the petitioner suffered a setback in November 2007, and that the loss of nine sewing machines caused the petitioner to change its business strategy to place its primary focus on importing goods from China. Had the petitioner documented the claimed business loss and loss of employees due to theft of property, the AAO might be willing to consider the petitioner's hiring of additional employees immediately following the filing of the petition in determining whether the beneficiary would be employed in a primarily managerial or executive capacity. However, the petitioner has not made a persuasive claim. Counsel indicated that the petitioner opened a sewing workshop in June 2007 and suffered the loss of equipment and employees in November 2007. There is no evidence that the petitioner ever employed nine employees to operate the nine sewing machines that were allegedly stolen. The petitioner's quarterly wage reports show that it did not hire any sewing machine operators until the last quarter of 2007. The petitioner has not submitted evidence to corroborate the claimed loss, and the AAO can find no evidence of such loss reported on the petitioner's Form 1120, U.S. Corporation Income Tax Return, for 2007. Going on record without supporting documentary evidence is not sufficient for purposes of meeting the burden of proof in these proceedings. *Matter of Soffici*, 22 I&N Dec. 158, 165 (Comm. 1998) (citing *Matter of Treasure Craft of California*, 14 I&N Dec. 190 (Reg. Comm. 1972)).

Moreover, the petitioner's claim that it hired four additional employees, including two managers and three college graduates, five days after the petition was filed, is not persuasive. In its letter dated February 13, 2008, the petitioner indicated that it intended to hire a warehouse director, sales manager, sales person and warehouse worker in a "few months." In response to the RFE, the petitioner indicated that such employees were hired on February 18, 2008. There was no evidence or indication in the initial filing to suggest that the petitioner was actively recruiting the warehouse and sales staff. Moreover, the evidence submitted on appeal indicates that the four employees allegedly hired in February 2008 are not managers or professionals as claimed by the petitioner, but rather individuals with a primary school education who operate sewing machines. Again, it is incumbent upon the petitioner to resolve any inconsistencies in the record by independent objective evidence. Any attempt to explain or reconcile such inconsistencies will not suffice unless the petitioner submits competent objective evidence pointing to where the truth lies. *Matter of Ho*, 19 I&N Dec. at 591-92. Doubt cast on any aspect of the petitioner's proof may, of course, lead to a reevaluation of the reliability and sufficiency of the remaining evidence offered in support of the visa petition. *Id.* at 591.

On appeal, counsel for the petitioner requests that the AAO consider the petitioner's growth and operational status as of May 2008. Again, the petitioner must establish eligibility at the time of filing the nonimmigrant visa petition. A visa petition may not be approved at a future date after the petitioner or beneficiary becomes eligible under a new set of facts. *Matter of Michelin Tire Corp.*, 17 I&N Dec. 248 (Reg. Comm. 1978). The evidence submitted on appeal has no bearing on a determination as to whether the beneficiary would be employed in a primarily managerial or executive capacity as of February 15, 2008, the date on which the petition was filed, and therefore has not been considered in this proceeding.

In visa petition proceedings, the burden of proving eligibility for the benefit sought remains entirely with the petitioner. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has not been met.

ORDER: The appeal is dismissed.